1951.

File No. O Extradition 51

Legal Department
A- **BRANCH**

P26E

Subject:— Opinions under the Indian Extradition Act, 1903.

File No. O. Extradition/51

Gen. 194 a.

139-A

C O N T E N T S.

Legal Department File No. O. Extradition /51.

Sr. No.	R.I. / O. No.	Subject	Pages.
		Opinions under the Indian Extradition Act, 1903.	
	O. Extradition/51.		
1.	931/ 16-1-51	Re: extradition proceedings between part A and B states.	1-4.
2.	1742 29-1-52	Re: Extradition proceedings.	5-6
3.	1601 25-1-51	Re: Extradition proceedings between Saurashtra Govt. and B'bay Govt.	7-8
4.	1775 28-1-51	See. 17(1) Whether thre is sufficient prima facie evidence to justify surrender of the accused.	9-10
5. 247 16-1-51	1843 13-1-51	Whether there is sufficient prima facie evidence to justify surrender of the accused.	11-12
6.	1892 31-1-51	Do	13-14

C O N T E N T S.

Legal Department File N°. C.Extradition/51.

Sl. No.	R.I. / C. No.	Subject	Pages.
7.	2377 7-2-51	see whether it would be expedient to surrender the accused for being tried again for the same offence.	15-16
8.	4002 10-3-51	Whether there is sufficient prima-facie evidence to justify surrender of the accused.	17-18
9.	4440 19-3-51	Do	19-20
10.	4818 27-3-51	Do	21-22
11.	10472 2-9-51	re: Extradition of the accused to Portuguese Govt. Secs. 20 and 3(1), (3), (6) and (8).	23-26
12. 20518 3-10-51	16770 22-10-51	Re: Extradition of Shri Mumjee from England Fugitive Offenders Act, 1881.	27-28
13.	7301 8-5-51	Whether extradition would be necessary in view of the application of the Criminal Procedure Code to Hyderabad State.	32

Contents

Legal Department File No. C. Extradition/51.

Sr. No.	R.I. / O. No.	Subject	Pages.
14	3814 21-6-51	Whether extradition would be necessary in view x x of the Criminal Procedure Code to Hyderabad.	35-36
15	19067 28-11-51	Re: Procedure for extradition to India of offenders from foreign ~~Asian~~ Countries Article 73 of the ~~constitu-~~ tion ~~x x India~~ constitution of India.	37-40

9/6/52 D83/1946

Submitted.

The question raised in these papers is whether in view of the Allahabad Court's Ruling in the news paper cutting, the extradition proceedings ~~as~~ so far as they relate to the surrender of accused persons between Part A State and Part B State can be dropped P.& S.D. quotes a Government of India letter wherein it is proposed to extend the Code of Criminal Procedure, 1898 to all Part B States by a law to be introduced in the current session of Parliament and that extradition proceedings are still necessary in respect of Part B States. In view of the Allahabad Court's Ruling P.& S.D. propose to get the position clarified by reference to Government of India. The R.L.A. is requested to offer his remarks.

Before 26th January 1950 it was necessary to have extradition proceedings in so far as they relate to the surrender of accused persons between the accedings States and the Dominion. (See Ram Bapu Saksena v. the State 51 cr. L.J. 1950, p. 1153). The position remains the same under the Constitution as the Criminal Procedure Code has not been extended to Part B States (see sec. 1(2) of the Code). The Allahabad ruling referred to by the D.M. Ahmedabad from the newspaper cutting is not yet reported and therefore in the absence of the report, it is not possible to appreciate the correctness or otherwise of the decision. There is however no objection to H.D. refferring this point to the Government of India for confirmation.

DS.(cr).

I agree.

Unless the Code of Cri. Procedure 1898 is made applicable to Part B States, it is suffix difficult to understand (as the Allahabad High Court seems to have held) had a warrent issued by a Court in Part A State can be served in Part B State.

R.L.A reply as in para 2.

Office of the R.L.A.

Extradition proceedings, between Part A and B States.

Recits

Before 26th January 1950 it was necessary to have extradition proceedings in so far as they relate to the surrender of accused persons between the acceding State and the Dominion. (See Ram Bapu Saksena v. the State 51 Cr. L.J. 1950, p. 1153). The position remains the same under the Constitution as the Criminal Procedure Code has not been extended to Part B States (see sec. 1(2) of the Code). The Allahabad ruling referred to by the District Magistrate, Ahmedabad from the newspaper cutting is not yet reported and therefore in the absence of the report, it is not possible to appreciate the correctness or otherwise of the decision. There is however no objection to Home Department referring this point to the Government of India for confirmation.

Sd/-

Remembrancer of Legal Affairs.

H.U.R. to p. & S.D. No.931 , dated the 15th January, 1951.

C.G.R. 11-6-

C 5

R.I.No. 1598/24-1-51.

Office of the R.L.A.

Seen and returned.

Sd/-

Remembrancer of Legal Affairs.

U.O.R. to p.d. S.D. No. 1742 , dated the
29th January 1951.

C.G.R. 11-6-

C 5

R.I.No. 24021 d 6-12-50.

Office of the R.L.A.

Since the Saurashtra Government is adamant, the course suggested by the Political and services Department may be adopted.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 1601 , dated the 25th January 1951.

C.G.R. 11-6-

C 5.

Office of the P.L.A.

As pointed out by the District Magistrate a prima facie case has not been made out against the accused justifying their surrender.

The copies of the depositions sent by the Hyderabad Government cannot be received as evidence since they are not duly authenticated as required by section 17(1) of the Indian Extradition Act.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 1775 , dated the 30th January 1951.

C.G.R. 11-6-

C 5.

I have gone through the papers. The Secretary to the Regional Commissioner and Advisor to the Raj Pramukh, Saurashtra, has issued warrants of xxx arrest of 2 brothers - Bhema Karshan and Megha Karshan - who are residents of a village in the Viramgam taluka of the Bombay State. The charges against the two brothers are: (i) that on the ight of 13-6-1950, they set fire to a fodder stack on the outskxk skir of the village Upariala in Saurashtra belonging to one Ahmed Shaikh and his partner (sec. 435) and (ii) that they gave criminal intimidation by anonymous communications to the complainant (sec. 507). Then it is alleged that on 15-6-1950 one of the brothers named Megha Karshan, who was arrested by the police, intentionally offered resistance to his lawful apprehension by effecting his escape (sec. 224).

2. On examining the question about the alleged escape of Megha, on facts there appears to be a prima facie case against him. But so far as the charges under sec. 435 and 507 are concerned, the prima facie evidence furnished by the Saurashtra Govt. does not make out any case against either of the accused. The utmost that can be said against these accused on this evidence is that they were seen in the xx evening preceding the night on which the hay stack was burnt near about the place, and that foot prints from the place of the hay stack led to the Dhedwada where the two brothers resided. Even assuming these circumstances to be true, it may not be possible to sustain a conviction under sec. 435. The same is the case with regard to the two anonymous chits which were found tied near the hay stack. It does not appear that any effort was made to establish that the chits were written, or tied there, by these accused or either of them. It xxxx seems to me, therefore, that on merits, it is difficult to hold that a prima facie case is made

made out under sections 435 and /or 507. If this assumption is correct, the charge under sec. 224 in respect of which a warrant of arrest has been issued against Megha Karshan would be groundless . On merits, therefore, the surrender of the accused may not be justified. It is, however, for consideration of Government whether the requisition made by the Saurashtra Government should be respected by this Government.

R.L.A

A We should say that the cordense does disclose a prima facie case. The surrender therefore would not be justified on merits.

Sd/-

U.R. to P. t.S.D. NO. 1843 d 31-1-51.

C.G.R. 11-6-

C 5

Office of the R.L.A.

The Prima facie evidence furnished by the Saurashtra Government does establish a strong case against the accused. But when the evidence of the complainant and his withnesses was recorded on 14-3-1950 before the Second Class Magistrate At Amreli, all the witnesses disowned knowledge of the offence. Even the complainant would not admit that the accused was the man who had given him the dhariya blow on his lip. Under the circumstance, no useful purpose ~~mxx~~ may be served by surrendering the accused. The Saurashtra Government may be informed accordingly.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No 1892 , dated the 31st January, 1951.

C.G.R. 11-6-

C S

Legal Department.

As the offences of theft and possession of stolen property arise out of the same set of facts, it would be inexpedient to surrender the accused persons for being tried again for the offence of theft.

Sd/-

Additional Secretary to Government.

U.R. to P.& S.D. No. 2377 , dated the 7th February, 1951.

C.G.R. 11-6-

C 5

Office of the R.L.A.

Prima facie evidence supplied by the Government of Hyderabad does not disclose an offence under section 395, Indian Penal Code, justifying the surrender of Mallapa s/o Pirappa. The course suggested by the Additional District Magistrate, Bijapur, May be adopted.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.&.S.D., No. 4009 , dated the 10th March, 1951.

C.G.R. 11-6-

C 5

Office of the R.L.A.

Even assuming the export of the bullock is prohibited, in view of the District Magistrate's veiw that the bullocks were purchased by the accused, it would not be possible to hold that a prima fi facie case is made out.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No. 4440 , dated the 19th March, 1951.

C.G.R. 11-6-

C 5

Even assuming the export of the bullock is prohibited, in view of the District Magistrate's veiw that the bullocks were purchased by the accused, it would not be possible to hold that a prima fit facie case is made out.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No. 4440 , dated the 19th March, 1951.

C.G.R. 11-6-

C 5

Office of the R.L.A.

There is prima facie case against both the accused justifying their surrender for the trial of both the sets of offences. The Additional District Magistrate's view that there is no prima facie case as far as the second set of offences is concerned is not correct.
(see A of p. 37).

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No. 4818 , dated the 27th March 1951.

C.G.R. 11-6-

C 5

Legal Department.

Two Portuguese nationals of Goa are alleged to have caused the death of one Indian national on board a Panamanian ship on the high Seas. When the ship came to Bombay, the Captain handed over the two Goan Citizens to the Bombay Police and the Bombay police arrested them on 9-1-1951 at 11-30 a.m. It would appear that the Panama Government is not willing to try them, for otherwise the two accused would not have been handed over to the Bombay Police. The Indian Government cannot try them because they are not Indian nationals nor was the offence committed in Indian territory. The Portuguese Government in Goa being informed of the situation by the Bombay Police have sent a requisition for extradition of these two accused to Goa to stand their trial for the alleged offence. The accused are on bail.

2. The P.& S.D. asks the R.L.A. to advise "whether extradition proceedings are necessary and feasible in the present case and if not, whether it will be regular to hand over the accused to the Portuguese Police without them".

3. It is assumed that there is no special provision on this particular point in any treaty between the Republic of India and the State of Portugal, relating to Goa. If so, the procedure to befollowed is that laid down in the Indian Extradition Act, 1903 (Act XV of 1903). Under Section 20 of that Act when the Government of any State outside India makes a requisition (as has been done in this case) for the surrender of a person, accused of an offence committed on board any vessel on the high seas, which comes into any port of British India, the Central Government and any Magistrate having jurisdiction in such port and authorised by the Central Government in this behalf may exercise the powers conferred by the Act. The functions of the

of the Central Government may be exercised by the Provincial (State) Government vide External Affairs Notification No. 67-x dated 31-3-1938. The relevant powers conferred by the Act are those stated in section 3 of the Act. Sub-section (1) of section 3 empowers the Government to issue an order to the Magistrate to inquire into the matter. Sub-section (3) requires the Magistrate to take such evidence as may be produced in support of the requisition and on behalf of the criminal. Sub-section (6) requires the Magistrate to report the result of ~~thkx~~ his inquiry to the Government and under sub-section (8) the Government, if satisfied, is to issue a warrant for the custody and removal of the criminal and for his delivery at a place and to a person named in the warrant.

4. The above procedure will have, therefore, to be followed and it will not be regular to hand over the accused to the Portuguese police without it.

Sd/-

Additional Secretary to Government.

U.R. to P.& S.D. No. 10472 , dated the

2nd July, 1951.

C.G.R. 11-6

C 5

Legal Department.

R.I.No. 20578 A dt. 8.10.1951.

Submitted.

Shri Mahomed Cassamally Munjee who was adjudicated an insolvent, has fled to London while his public examination was proceeding and the Official Assignee desires to adopt criminal proceedings against him. He, therefore, requested Government to cancel the passport granted to the insolvent and to compel him to return to India. Government accordingly issued instructions to the High Commissioner for India in London but the Ministry of External Affairs informed Government that according to their information Shri Munjee has obtained a British passport from His Majesty's Government and presumably surrendered his Indian passport and that nothing can, therefore, be done under the Passport Rules. The Ministry further informed this Government that if Government wants to bring back Shri Munjee that can only be done by approaching His Majesty's Government for their cooperation for his return and that it can be done only on receipt of the State Government's specific request in that behalf (vide, pp.19-20 ante). Government, therefore, made a further reference to the Official Assignee who informed Government that besides being an undischarged insolvent there is prima ex facie evidence against Shri Munjee to show that he had secreted large sums of money and also committed criminal offences which are punishable under the India Penal Code and the Presidency Town Insolvency Act. The Official Assignee also stated that on the grounds of public policy it was essential to bring back a person like Shri Munjee so that his affairs can be properly investigated. The P & S.D. considers that extradition of Shri Munjee cannot be asked for under the Indian Extradition Act, 1903 but that action can be taken under the Fugitive Offenders Act, 1881. The Chief Secretary has, therefore, requested R.L.A. to advise whether action can be taken under the Fugitive Offenders

Act ..

Act or whether the procedure indicated by the Government of India at pp.19-20 will have to be followed.

2. Shri Munjee is in England and it does not appear that he can be compelled to return to India by a mere request to His Majesty's Government. It is no doubt true that Government of India have stated in their letter dated 31-7-51 that the cooperation of His Majesty's Government will have to be sought for his return from the United Kingdom. But this cooperation cannot be secured unless and until a legal warrant forarrest of the fugitive is issued by a Magistrate in India as provided for in section 3 of the Fugitive Offenders Act, 1881. That Act provides a system of extradition by which fugitives from any one part of His Majesty's dominions may be apprehended in another part and sent back for trial to the part whence they fled (Halsbury's Laws of England, Vol. XIV, p.542). It is true that India is now no longer a part of His Majesty's dominions; but by virtue of the provisions of India (Consequential Provision)Act, 1949 until provision to the contrary is made by the authority having power to alter the law, the provisions of Fugitive Offenders Act would have the same operation in relation to India, and to persons and things in any way belonging to or connected with India, as it would have had if India had not become a Republic. (Cf. Sect. 1(1) of India (Consequential Provision)Act, 1949. The Government of India do not appear to have made any changes in the matter of extradition of fugitives from United Kingdom by legislation and in the circumstances the provisions of the Fugitive Offenders Act can still be availed of and extradition of Shri Munjee can be demanded from His Majesty's Government thereunder. The Fugitive Offenders Act applies only to the offences of treason and piracy and to every offence which is punishable by imprisonment with hard labour for twelve months or more or by any greater punishment. Shri Munjee appears to have committed offences under clauses (9)(ii) and (b)(ii) of section 103 of the Presidency

Extradition of Shri Munjee from England
Fugitive Offenders Act, 1881.

Shri Munjee is in England and it does not appear that he can be compelled to return to India by a mere request to His Majesty's Government. It is no doubt true that Government of India have stated in their letter dated 31-7-1951 (at pp.19-20 ante) that the cooperation of His Majesty's Government will have to be sought for his return from the United Kingdom. But this cooperation cannot be secured unless and until a legal warrant for arrest of the fugitive is issued by a Magistrate in India as provided for in section 3 of the Fugitive Offenders Act, 1881. That Act provides a system of extradition by which ~~fugi~~ fugitives from any one part of His Majesty's dominions may be apprehended in another part and sent back for trial to the part whence they fled (Halsbury's Laws of England, Vol.XIV, p. 542). It is true that India is now no longer a part of His Majesty's dominions; but by virtue of the provisions of India (Consequential Provision) Act, 1949 until provision to the contrary is made by the authority having power to alter the law, the provisions of the Fugitive Offenders Act would have the same operation in relation to India and to persons and things in any way belonging to or connected with India, as it would have had if India had not become a Republic. (Cf; section 1(1) of India (Consequential Provision) Act, 1949). The Government of India do not appear to have made any changes in the matter of extradition of fugitives from United Kingdom by legislation and in the circumstances the provisions of the Fugitive Offenders Act can still be availded of and extradition of Shri Munjee can be demanded from His Majesy's Government thereunder. The Fugitive Offenders Act applies only to the offences of treason and piracy and to every

offence which is punishable by imprisonment with hard labour for twelve months or more or by any greater punishment. Shri Munjee appears to have committed offences under clauses (a)(iii) and (b)(iii) of section 103 of the Presidency Towns Insolvency Act, 1909 and those offences are punishable with imprisonment for a term which may extend to two years. In the circumstances they are extraditable under the Fugitive Offenders Act. If so, a complaint under section 104 of the Presidency Towns Insolvency Act, and for offences under the Indian Penal Code, if any, will have to be filed and a warrant against Shri Munjee obtained, after which proceedings for his extradition under the Fugitive Offenders Act, 1881, can be taken. Government may, however, consult the Government of India before the warrant is sent to the United Kingdom.

Sd/-
Remembrancer of Legal Affairs.

U.R. to P.& S.D.No. 16770, dated the
22nd October, 1951.

C.G.R. 11-6-

C 5

Legal Department.

It is not possible to examine the legal positi on unless a copy of the High Court Judgment is obtained. Prima facie the view taken by the Political and Services Department is correct. It is not however necessary to pursue thepoint in the present case since in view of the application of the Criminal Procedure Code to Hyderabad the question of extradition under the Extradition Act would not arise.

Sd/-

Addtional Secretary to Gogernment

U.R. to P. & S.D., No. 7301 , dated the 8th May 1951.

C.G.R. 12-6-

C S

LEGAL DEPARTMENT.

It appears that the grounds on which the High Court based its decidion were not correct in view of the External Affairs Department Notification No.67-X, dated 31st March 1938. But the judgment of the High Court did not take into consideration this notification because its attention was not drawn to it. That being so and in view of the fact that by reason of the application of the Criminal Procedure Code, 1898, to Hyderabad thematteris now academic both as a point of law and as one relating to this particular case, it is not now worthwhile to pursue it any further.

Sd/-

Additional Secretary to Government.

U.R. to P. & S.D.No. 9814 , dated the 21st June, 1951.

C.G.R. 12-6-

C 5

Legal Department.

In his opinion No. 889-Confl., dated the 23rd October 1951, R.L.A. advised that the facts did not disclose any offence of ~~kidn~~ kidnapping in this case and Government in Political and Services Department thereupon informed the complainant as well as the Chief Presidency Magistrate that Government did not wish to take any action in the matter. The complainant's advocate has now informed Government that Government had no authority to refuse to forward the the proceedings to the Central Government which was was the competent authority to take action and has requested for a copy of the order passed by Government and also the reasons for the same. The papers are referred to R.L.A. with a request to advise what reply should be given to the Advocate.

2. The procedure for extradition to India of offenders from foreign countries is given by Muddiman a pate 77 of his book. It is stated there that application for exradition must be made to Government who will if they consider the case should be proceeded with, enter on diplomatic action with the object of procuring surrender. It is obvious, therefore, that a discretion is reserved to Government either to ask not to ask or extradition when an application is made. The subject of extradition, however, falls within the Union list (vide item 18 of list I in the Seventh Schedule to the Constitution) and the extradition is to be asked for in pursuance of the provisions of a treaty with the U.S.A. and consequently the subject will prima facie fall within the executive autho of the Union Government (vide Article 73, however, of Constitution). Under clause (2) of Article 73, howev it is provided that until otherwise provided by Parli

Parliament, a State and any officer or authority of a may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State Government or officer or Authority could exercise immediately before the commencement of of the Constitution. If, therefore, the powers of the Central Government in the matter of delegain demanding extradition were delegated to the Provincial Government before the commencement of the Constitution, it would be open to the State Government to exercise those powers by virtue of Article 73(2) of the Constitution. On the other hand, if there was no such delegation, Central Government will be the only authority competent to take action in the matter and it would not be open to the State Government to take a decision. The P & S.D. is not in a position to say whether the powers were delegated to Provincial Government and in the circumstances, it would be safer to obtain concurrence of the Central Government before a reply is given to theAdvocate of the complainant. On obtaining such a concurrence the Advocate may be informed that Government does not desire to take any action in the matter as it is satisfied that there is no prima facie case against the accused to justify a demand for her extradition.

Sd/-
Additional Secretary to Government.

U.R. to P & S.D.No. 19067 dated the 28th November, '5

C.G.R. 12-6-

C 5